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No. 5, Original.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, COMPLAINANT,

v.

JOSEPH F. SHIPP ET AL.

INFORMATION IN CONTEMPT.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

THE UNITED STATES OF AMERICA, complainant, v. JOSEPH F. SHIPP ET AL. } No. 5, Original.

INFORMATION IN CONTEMPT.

BRIEF FOR THE UNITED STATES.

The information filed in this case by the Attorney-General of the United States charged, in substance, that February 11, 1906, Ed Johnson, a negro, was convicted of rape by the criminal court of Hamilton County, Tenn., held in Chattanooga, and was sentenced to death; that on March 3 following Johnson filed a petition for a writ of habeas corpus in the United States Circuit Court sitting in Tennessee, alleging that in the trial he had been deprived of constitutional rights; that on March 10 said petition was dismissed and the writ denied, petitioner being remanded to the sheriff of Hamilton County to be detained in his custody for ten days, in which to enable petitioner to prosecute an appeal, and in

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default of such appeal to be further proceeded with by the state court under its sentence; that on March 17 Mr. Justice Harlan, of the United States Supreme Court, allowed an appeal from the decision of the Circuit Court, and on March 19 an order was made by the Supreme Court allowing said appeal; that defendant Shipp, sheriff of Hamilton County, then was notified by telegraph of said order, which stayed all proceedings against Johnson and required Shipp to retain custody of Johnson pending determination of the appeal; that before 6 o'clock in the evening of March 19 a full account of this action of the Supreme Court was published and circulated in the evening papers in the city of Chattanooga; that defendant Shipp was the sheriff of Hamilton County and defendants Matthew Galloway and Jeremiah Gibson, among others, were his deputies; that the deputies as well as the sheriff were fully advised of the action of the Supreme Court and were informed and had every reason to believe, from current reports and rumors conveyed to them, that an attempt would be made on the evening of the 19th or early in the morning of the 20th, by a mob composed of a large number of armed men, to force an entrance into the county jail for the purpose of taking Johnson therefrom and lynching him; that notwithstanding said information and said reports the sheriff withdrew from the jail early in the evening of the 19th the usual and customary guard and left in charge thereof only the night jailer—defendant Gibson—and committed

other acts and did other things evincing a disposition on the part of said sheriff to render it less difficult and less dangerous for the mob to prosecute and carry into effect its unlawful design and purpose of lynching Johnson; that about 9 o'clock in the evening of said March 19, defendants and others conspired to break into the jail for the purpose of taking Johnson therefrom and lynching him, with intent to show their contempt and disregard for the above-mentioned order of this court and prevent it from hearing the appeal of Johnson; that pursuant to this conspiracy and in order to show their contempt and disregard for said order of this court, between 9 and 12 o'clock in the evening of said March 19, at Chattanooga, Tenn., defendants, excepting Shipp and Gibson, assembled with others, broke into the jail, took Johnson out by force, and lynched him; that Gibson was the only officer at the jail when the mob broke in, and that while the mob was in possession of the jail defendant Shipp arrived but made no effort to prevent the mob from taking Johnson from the jail; that defendants Shipp and Gibson were in sympathy with the mob while pretending to perform their official duty of protecting Johnson, and that they aided and abetted the mob in prosecution and performance of the lynching; that all of these acts were committed by defendants with the intent upon their part to show their contempt and utter disregard for the above-mentioned order of this court and to prevent it from hearing Johnson's appeal.

All of the defendants, excepting Paul Pool, have appeared and answered the information. It has been impossible to locate Pool, and consequently no service has been made upon him. The Attorney-General has filed a motion that the information be dismissed, without prejudice, except as to the following defendants: Shipp, Galloway, Gibson, Nolan, Williams, Justice, Padgett, May, and Ward. The answers, except the questions of law raised by them, which have already been passed upon by this court, consist of a general denial and, except in the cases of Sheriff Shipp, Gibson, and Williams, the setting up of an alibi by each defendant. Williams admits that he was at the jail a short time before and at the time Johnson was taken from it by the mob, and that he followed the mob and witnessed the lynching, but denies participating in the acts of the mob.

Certain preliminary questions of law were raised by defendants and passed upon by the court (203 U. S., 563). It was there held that the complaint sufficiently set forth a contempt of this court; that it was immaterial for the purposes of this proceeding whether or not the Circuit Court had jurisdiction of the habeas corpus proceedings or whether this court had jurisdiction to entertain the appeal; and that the answers of the defendants under oath disavowing intent did not purge them. This decision removes from the case all questions of law except those as to the admission of evidence. The question

now before the court is one of fact: Has the United States in the evidence, which has been taken by the commissioner under order of this court, proved the allegations of the information? Most of those allegations are established by agreement (6)* or undisputed evidence. The only issues are: (1) Were the sheriff and his deputies informed and did they have every reason to believe that an attempt would be made in the evening of March 19 by a mob to break into, and take Johnson from, the jail for the purpose of lynching him? (2) Did the sheriff and his deputies commit acts and do things manifesting a purpose and disposition on their part to render it less difficult and less dangerous for the mob to lynch Johnson and aid and abet the mob? (3) Were defendants, excepting Shipp and Gibson, members of the mob which lynched Johnson, or did they participate in the conspiracy? (4) Did defendants in the things they did intend to show contempt of the order of this court and to prevent it from hearing Johnson's appeal?

THE LYNCHING AND PRECEDING EVENTS.

January 23, 1906, a rape was committed upon a white woman in or near Chattanooga, Hamilton County, Tenn. (75, 2136, 2137).

At that time and at all times hereinafter mentioned defendant Shipp was the duly elected, qualified, and acting sheriff of Hamilton County, Tenn., and as such sheriff had and exercised full charge and

*All figures herein refer to paging in the original report of testimony, i. e., marginal paging.

control of the county jail located in Chattanooga, and was the legal custodian under the laws of Tennessee of all persons duly committed in said county under the laws of the State to confinement and imprisonment within the jail, and the defendants, Matthew Galloway and Jeremiah Gibson, were duly appointed, qualified, and acting deputy sheriffs under Shipp (9).

January 25[a] Shipp and his deputies arrested Ed Johnson, a negro, in or near Chattanooga, charged with the crime (2136, 2137).

Late in the afternoon of the same day Johnson was, by order of the judge of the state Criminal Court, taken by Sheriff Shipp to Dayton and from there to Nashville, where he was kept until the day of his trial, February 6. Johnson was removed and kept away from Chattanooga during this period because of fear that he would be lynched (1638, 1674, 1675, 1732, 1737, 2138, 2139, 2147).

The night of January 25 a large mob, 1,600 or 1,800 strong, some say, attacked the jail at Chattanooga where Johnson and another negro, also arrested for rape, were supposed to be confined (74, 75, 197, 198, 376, 377, 1374, 1643, 1673, 1732).

Three of Shipp's deputies were at the jail, and, with the assistance given them by the police, the chairman of the safety committee, and others, prevented the taking of any prisoners from the jail (75, 377).

At the suggestion of the deputies the mob appointed a committee, of which defendant Justice was one, to

[a] All dates refer to the year 1906 unless otherwise specified.

go through the jail and satisfy itself that Johnson was not there (381, 382, 1674, 1736).

Even after this committee had reported that the persons whom the mob sought were not in the jail it was necessary to use force to put the mob out of the jail yard (377, 381, 384).

The dangerous and violent character of this committee and the mob and their anger at not being able to find Johnson is shown by the testimony of M. N. Whitaker, prosecuting officer for Hamilton County (1641, 1642); S. D. McReynolds, judge of the criminal court of that county (1733–1737); and defendant Galloway (2087–2091).

One other night about the same time the officers thought there was to be a mob (98). The militia was called out twice about that time to protect the jail against a mob which sought to take Johnson's life (152, 1800).

January 26 a special grand jury was convened and the next day indicted Johnson for the crime above referred to (1738).

February 6 Johnson was brought to Chattanooga from Nashville and his trial commenced that day in the criminal court of Hamilton County (2147).

February 9 he was convicted and sentenced to death (6).

The date of execution was originally fixed as March 13, but on or about March 11 was changed to March 20 (113, 1680).

No appeal was taken by the lawyers appointed by the court to defend Johnson (1676, 1677).

Two daily papers were published in Chattanooga, the *Times*, a morning paper, and the *News*, an evening paper, both having a large circulation (26, 55, 1771).

Mr. Thomas, an attorney appointed by the court to defend Johnson, made the following statement, which was published in the Chattanooga *Times* of February 10, as to the reasons why an appeal was not prosecuted in Johnson's behalf:

> *To the people of Chattanooga:*
>
> I can not leave my fellow-citizens ignorant of what occurred on yesterday. If any lawyer for a prisoner and any 12 jurors trying a prisoner should have the sympathy of the people, that sympathy should be freely given to the jurors and the defendant's attorneys in this case. What we have suffered, the mental strain we have been under, the weight of the burden of the responsibility upon us, can not be told. The horror and awfulness of the last few days are things I hope never again to be called on to endure.
>
> When the jury brought in a verdict of guilty we, as the attorneys, had to settle the question whether the case would be appealed to the Supreme Court. I felt that we should not bear that responsibility alone, and I went to Judge McReynolds and asked him to appoint three other lawyers to meet with Judge Shephard, Mr. Cameron, and myself, and counsel and advise with us and help to share with us the responsibility. Judge McReynolds granted my request and appointed Messrs. Foster V. Brown, Robert Pritchard,

and J. H. Cantrell, and said to me that these three gentlemen would meet us at the office of Garvin & Cantrell at 1.30 o'clock yesterday afternoon. We all met at that hour and we were in consultation until 3 o'clock. The case was reviewed and our duty and the rights of the defendant were discussed. The most careful reflection was given to the horrible crime charged against the defendant, and the fact that a jury had, upon their oath, fixed that crime on the accused man. We discussed the recent mob uprising and the state of unrest in the community. It was the judgment of all present that the life of the defendant, even if the wrong man, could not be saved; *that an appeal would so inflame the public that the jail would be attacked and perhaps other prisoners executed by violence.* In the opinion of all of us a case was presented where the defendant, now that he had been convicted by a jury, must die by the judgment of the law, or else, if his case were appealed, *he would die by the act of an uprising of the people.*

We discussed the trial, and it was agreed by all that it was quiet and orderly and fair according to the forms of the law, and that no error had been made in the charge or in admitting or excluding evidence. All were agreed that the jury was one of the best which ever sat in our court-house. Messrs. Brown, Pritchard, and Cantrell agreed that Judge Shephard, Mr. Cameron, and I had performed our full duty in our disagreeable task, and that if a mistake were made and the defendant were not the right man the mistake was not charge-

able to us and the responsibility not on us. In view of all the conditions, it was the unanimous vote that the law ought to be allowed to take its course if Judge McReynolds were satisfied with the verdict, and if he were to approve it and pass judgment of death on it.

It was suggested that we ought to go to the jail and see the prisoner and lay the facts before him, and if he demanded an appeal, then he ought to have that right under the law. Judge Shepherd, Mr. Cameron, and I went to the jail and spent a half hour with the man. We asked him if he felt that we had performed our duty in his defense, and he answered that he did not know what more we could have done for him. I said: "Ed, we don't know whether you are the guilty man or not; but you and God knows. The jury says you are the man." His reply was: "Yes, they have put it on me, and I guess I have to take it but I ain't guilty." I then said to him: "Ed, your life has been saved up to this time, but the people believe, now that the jury have acted, more than they ever did before that you are the right man. They are outraged against you and *even if you are innocent, as you say you are, we do not believe that we can save your life.*" Judge Shepherd explained to him his right of appeal; that the supreme court met in September next; that an appeal would stay the judgment until that time; that we did not see any reasonable ground to suppose that the Supreme Court would reverse the sentence, and that *we feared an appeal would cause mob violence*

against him. I asked him if he had ever heard the story of "Old Dog Tray," and he said he had. I told him that Old Dog Tray lost his life because he was found in bad company; and I said: "Ed, the Last Chance saloon is bad company. If you are an innocent man, you, like Old Dog Tray, were found in bad company. Old Dog Tray lost his life on that account, and it looks like you must lose your life on the same account. The jury would not believe your bad company. If you die, Ed, and you are innocent, your bad company will be the thing that kills you, because the jury refused to believe anything they said."

Without giving all that occurred at the jail, he said to us that *he did not want to die by a mob;* that he would do as we thought best. He said he would go over to the court-house and tell the judge that he did not have anything more to say than that he was not the guilty man.

I want the people to know that the foregoing facts moved us to allow the law to take its course under the verdict of the jury and the judgment of Judge McReynolds. Six lawyers settled it in this way after the calmest reflection and under the keenest sense of the great responsibility.

In view of the awfulness of the crime committed, I beg that the sheriff and every peace officer of Chattanooga and Hamilton County will still try to get all possible further light, and if any person anywhere knows anything whatever tending to show or reflect light on

> either the guilt or innocence of the defendant, I beg that such person make known all that he may know to us or to Attorney-General Whitaker.
>
> W. G. M. THOMAS.
>
> (1677, 1678, 1705, 1768, 1785, 1926, 2167–2170.)

On the afternoon Johnson was convicted he was secretly taken from Chattanooga to Knoxville because of fear of mob violence to him (1591–1596, 661, 662, 1640, 2152, 2172).

From the time the crime was committed until after Johnson's trial the people of Chattanooga were greatly excited over the crime and Johnson's alleged connection with it, and there was great apprehension on the part of the people as well as the officers that attempts would be made to lynch Johnson (153, 198, 201, 661, 662, 1690, 1800, 1801, 1826, 1835, 1873, 1882, 1901).

It was because of this intense excitement and the feeling that speedy execution of Johnson might prevent his being lynched that Johnson was so quickly indicted and tried (1766).

While the trial was in progress extra deputies were sworn in and an unprecedented number of guards were kept around the court-house and at the jail at night (76, 78, 198, 199, 201, 207, 315, 496, 512, 662, 1369, 1370, 1643, 1740, 2073).

Guns to be used in protecting the jail against a mob were purchased (76).

March 3 Johnson filed a petition for a writ of habeas corpus in the United States circuit court for

the northern division of the eastern district of Tennessee (6).

March 10, 1906, said petition was denied, the Circuit Court ordering that Johnson be remanded to custody of the sheriff of Hamilton County, Tenn., to be detained by said sheriff in his custody for ten days in which to enable said petitioner to prosecute an appeal from said order, and in default of the prosecution of said appeal in said time, to be then further proceeded with by the court of the State of Tennessee under its sentence (7).

This order was made public through the press (26–33).

Johnson was at Knoxville, where he had been kept since his conviction, for hearing upon his petition, and was taken back to Chattanooga March 11 (76, 77, 2172).

March 17 application was duly presented by Johnson to Mr. Justice Harlan of the Supreme Court of the United States, asking that an appeal be allowed to that court from the order of the said Circuit Court denying Johnson's petition for a writ of habeas corpus. This appeal was allowed by Mr. Justice Harlan on the same day (7, 8).

March 18 the Chattanooga *Times* published notice that application for said appeal had been made (34–37).

March 18 the following telegram was received by Judge Clark of the said United States Circuit Court,

and by his secretary was communicated to Sheriff Shipp on the afternoon of that date:

WASHINGTON, D. C., *March 18.*

To Hon. C. D. CLARK,
United States Circuit Court,
Chattanooga, Tenn.

Have allowed appeal to accused in habeas corpus case of Ed Johnson. Transcript will be filed to-morrow and motion also made by Johnson counsel for formal allowance of appeal of court.

JOHN M. HARLAN,
Associate Justice.

(13, 14, 1720.)

March 19 the Chattanooga *Times* published news of the allowance of the appeal by Justice Harlan, in which it said:

> From these authorities it was learned that the granting of an appeal in a case like this acted to supersede all process in the state courts. No stay is necessary, according to the authorities, and the statute is self-operative. Pending a decision of the appeal there can be no execution by any state authority.
>
> TWO ALTERNATIVES NOW.
>
> There are two alternatives depending upon the final decision in Washington. In case the appeal is dismissed, which may be done at noon to-day, the prisoner will be remanded to the state court at once and then must be again taken into open court and resentenced, giving another term of from thirty to sixty days between the time of sentence and its execution.

> In case the petition for a writ of habeas corpus is granted under the record in the case the prisoner will be released from custody under his present conviction and the state court will have the privilege, in case it is found feasible, to indict him and try the case again. It is given out by competent legal authority that the grounds for a release will be the sustaining of the defendant's contention that his constitutional rights have been violated (39–44).

March 19 an order was made by the United States Supreme Court allowing an appeal to said court from the judgment of said Circuit Court denying petition for writ of habeas corpus, as follows:

Ed Johnson, Appellant, *v.* The State of Tennessee.

> On motion of Mr. E. M. Hewlett, of counsel for the appellant, it is ordered by the court that an appeal from the Circuit Court of the United States for the Eastern District of Tennessee be and the same is hereby allowed, and that all proceedings against the appellant be stayed, and the custody of the said appellent be retained pending this appeal.
>
> Per Mr. Chief Justice FULLER. (8.)

About 1 o'clock in the afternoon of said March 19 the deputy clerk of the Supreme Court delivered the following telegram to a telegraph company for transmittal to the addressee:

> WASHINGTON, *March* 19, 1906.
>
> To SHERIFF OF HAMILTON COUNTY, TENN.
>
> *Chattanooga, Tenn.*
>
> Supreme Court of United States has allowed Ed Johnson appeal from Judge Clark's order,

and directed all further proceedings stayed and custody of Johnson retained pending appeal here. See section 766 Revised Statutes of United States.

JAMES H. MCKENNEY,
Clerk Supreme Court, U. S. (11, 12.)

This was received by the telegraph office at Chattanooga about 3.30 on the same afternoon and delivered between 4 and 5 o'clock on that afternoon (64, 68, 71).

About 2 o'clock on the afternoon of the 19th Judge McReynolds told Sheriff Shipp that the Supreme Court had granted a stay in the Johnson case and that thereafter Johnson was a federal prisoner (1747,1776, 2180–2182).

Between 2 and 4 of the afternoon of said March 19 the following telegram was received by Judge Clark, and by his secretary communicated to Sheriff Shipp, at the jail, about 5 o'clock that afternoon, with a copy of the statute therein referred to:

WASHINGTON, D. C., *March 19, 1906.*

Hon. C. D. CLARK, United States Court,
Chattanooga, Tenn.:

Court has just allowed appeal in Johnson's case and ordered all further proceedings against him delayed and custody retained pending appeal here. It will be well to call attention of state officers immediately to section 766 of Revised Statutes.

JOHN M. HARLAN. (15, 16, 2180.)

The statute referred to reads:

Pending the proceedings on appeal in the cases mentioned in the three preceding sections,

and until final judgment therein, and after final judgment of discharge, any proceedings against the person imprisoned or confined or restrained of his liberty, in any state court, or by or under the authority of any State, for any matter so heard and determined, or in process of being heard and determined, under such writ of habeas corpus, shall be deemed null and void.

Provided, That no such appeal shall be had or allowed after six months from the date of the judgment or order complained of.

Shipp understood that thereupon Johnson was held as a federal prisoner. (2182.)

There was published and circulated in Chattanooga, in the evening paper published in that city, on March 19, about 4 o'clock, an account of said action of the Supreme Court (8, 55–60), under the headlines, "An Appeal is Allowed. Ed Johnson Will Not Hang To-morrow." This reads, in part:

> The gallows in the Hamilton County jail has again been disappointed in the case of Ed Johnson, convicted by the state courts of rape and sentenced to death. The hanging will not take place to-morrow morning, as scheduled.
>
> * * * * *
>
> After the argument and motion to-day it will, in all probability, be two or three weeks before the opinion will be handed down by the Supreme Court, and Johnson's lease on life is therefore of an undetermined period. However, he will not be hanged to-morrow, though all preparations for the final scene have been

made. The action of the associate justice of the Supreme Court acts as a stay of execution in Johnson's case, and even if the motion for an appeal is not granted, it will in all probability be nearly sixty days before he could again be sentenced and the execution carried out.

Provided the United States Supreme Court decides to overrule Judge Clark's decision, the case will then be tried on its merits before the Supreme Court, and the discussion of whether or not constitutional rights have been infringed upon will, if the Supreme Court decides favorably for the prisoner, cause the granting of a writ of habeas corpus for the negro, and he will be set at liberty. This being the case, a new indictment and a new trial will in all probability be gone through with.

* * * * *

The decision of the Supreme Court that Johnson had not been granted his inalienable rights under the Constitution would serve to give him his liberty, while the decision that he had not would close the doors of the jail forever against him. He would then be taken to the state court and resentenced, and after a period of about thirty days he would be executed.

The news of that action of the court was also posted on a newspaper bulletin (97).

After hearing of the stay, Shipp says that he made no effort and gave no orders to have deputies or others guard the jail, but left the night jailer, defendant Gibson, there alone (2182).

The county jail at Chattanooga, in which Johnson was confined on the 19th, consisted of four stories, two above ground and two below ground. Entrance to the jail was on the third floor, counting from the bottom. In the front part of the building, on this third floor, was an office section. An iron door led from this section into the jail proper; that is, the protected part of the building, where the prisoners were kept. Johnson was confined on the top floor. To reach him from outside the jail it was necessary to go through the offices, through the iron door between the offices and the jail proper, up a flight of stairs, through a steel-barred door, right behind which was a circular door consisting of heavy steel bars several inches apart, which revolved so as to make a passage. Passing through this circular door, one came into a corridor around which were cells having iron doors which could be locked. It was in one of these cells that Johnson was confined (2195–2198, 84, 85, 90, 348, 358, 359, 513, 514, 1194, 1995, 1996, 2017).

The jail was located in a populous neighborhood and there were houses around it (1779).

In the evening of the 19th a white male prisoner was removed from the upper floor of the county jail in Chattanooga, leaving only Johnson and a white woman on that floor (124, 449, 1997, 1998.)

This same man had been removed in the same way at the time of the first attempt to lynch Johnson (449).

About half past 8 that night a number of men entered the jail (182, 357–360) and went directly and

without resistance to the door leading to Johnson's corridor (85). There is a variance of evidence as to whether the door leading from the offices to the jail proper was locked during the evening (513–515, 2000–2002), but if it was locked when the mob came it was easily broken down (2001–2002).

Gibson was the only officer there at the time, and he was on the top floor with Johnson (85, 171, 358, 362, 375, 2000).

Keys were obtained from him (86) without resistance (2003, 2020, 2021), but, as the lock on the door leading to the corridor where Johnson's cell was located had been struck by a member of the mob, the keys would not work (87, 360, 2005).

The mob, with sledge and ax, then began to break the bolts on the corridor door (87, 183, 361).

About 12 men were actively engaged in breaking down the door and in all subsequent events of the lynching (21, 85, 104, 360, 364, 411, 413, 911, 1669). Some of these men were masked (21, 88, 360, 364, 411, 2186).

A crowd of spectators began to gather around the jail soon after the mob reached it, and continued to gather in and around the jail until Johnson was taken out (19, 80, 223, 241–243, 364).

This crowd was variously estimated from a few to 150 or more (171, 243, 331, 374, 410, 411, 421, 1669, 1777).

It took over an hour to break the bolts on the corridor door (88, 89, 182, 361).

Two men then went through the circular door and *in a few minutes* brought Johnson out with his arms tied with a rope (20, 91, 1198).

When Johnson was thus brought out, the dozen men or so composing the mob grabbed him (91).

This mob took Johnson from the jail to the county bridge over the Tennessee River, which is about six blocks—a ten-minute walk—from the jail (22, 92, 330).

Johnson was taken from the jail a little after 10 o'clock (91, 92, 364, 408).

From the references already given it is apparent that there was no interference or attempted interference of any consequence with the mob before it left the jail, and there was none after it left (22, 92).

The crowd which had gathered around the jail followed the mob down to the bridge (93, 1199).

When the bridge was reached the mob took Johnson a little beyond an arc light, put a rope around his neck, threw it over a beam, and swung him up (23, 93, 415).

At the bridge the mob actively engaged in lynching Johnson were close to him and separated by a space from the crowd of spectators (331, 336, 1199).

The first time Johnson was swung up, the rope broke or slipped and he fell (23, 93, 104, 333).

He was swung up a second time and shot (23, 93, 1284, 1285).

After some shots were fired, Johnson again fell, and while lying on the ground was again shot (24, 333, 417, 1286, 1289).

It was about ten minutes after the mob had reached the bridge until Johnson was killed (23).

The above facts tell, in a general way, the story of the lynching and events leading up to it and are not disputed in any material point.

SHERIFF SHIPP.

The evidence clearly shows that Sheriff Shipp, directly after receiving notice of the stay of execution by the Supreme Court, had reason to believe that a mob would that night attack the jail in an attempt to take and lynch Johnson; in fact, the conclusion is irresistible that one in Sheriff Shipp's position at that time must have felt certain that the jail would be attacked that night. The evidence also clearly establishes that by his omissions to provide any protection whatsoever for the jail that night or to take any action of any kind to guard against the forming or attack of a mob, or even to attempt to ascertain, through his deputies or others, what possibility there might be of an attempt to lynch Johnson, Shipp not only evinced a purpose to render it less difficult and less dangerous for the mob to lynch Johnson but he knowingly aided and abetted the mob. After Shipp had received information that the mob was at the jail for the purpose of taking Johnson to lynch him, Shipp, by rushing to the jail without calling upon anyone for assistance or communicating in any way with anyone, placing himself, practically without resistance, in the hands of the mob, and making no effort to protect Johnson or to interfere or get others to interfere with

the work of the mob, and by his failure to make any effort to ascertain the identity of the persons in the mob, again manifested a desire upon his part to make the work of the mob as easy as possible and to assist it.

There is a variance of testimony as to the condition of public sentiment and the existence of apprehension of the lynching of Johnson at the time the lynching occurred. But the evidence tending to show that a lynching was not expected to occur on the 19th, if not knowingly false, establishes great ignorance of the witnesses as to actual conditions. It is utterly unreasonable to say that the lynching of Johnson was not expected to occur then. It will be remembered that the crime was committed on January 23 and Johnson was arrested January 25. That night a mob attacked the jail in which he was supposed to be and ascertained that he was not there. Johnson was kept in Nashville from that day until his trial commenced, February 6. Immediately upon his being convicted, February 9, he was taken away from Chattanooga and kept away until March 11, the day after his petition for habeas corpus was denied. It is not controverted that intense and unprecedented feeling against Johnson existed from the time of the crime until after his conviction and that this feeling frequently manifested itself, although Johnson was not in Chattanooga from the time of his arrest until his trial began. The bitterness of this feeling and the great apprehension of the officers of mob violence is seen in the testimony of defendants' own witnesses describing

the precautions and secrecy exercised by them in the way they took Johnson in and out of Chattanooga, as well as by the fact that they kept him away from Chattanooga all of the time from the day of his arrest until March 11, two days before the time set for his execution, with the exception of the three days he was there attending his trial (2138–2150).

This mob spirit was not confined to Chattanooga, but was encountered, as testified by Sheriff Shipp, all along the route over which he took Johnson in going from Chattanooga to Nashville immediately after Johnson's arrest (2140–2142).

Distrust and apprehension of the delays of the law and fear that Johnson's execution would be delayed by various appeals were at the bottom of the mob spirit which existed. Effort was made by defendants to show that the mob which attacked the jail on the 25th was moved by an abhorrence of the crime and not fear of delays of the law; that there was no reason to fear the delays of the law would again create a mob, and that the sheriff and his deputies might feel assured that a mob would not endeavor to get Johnson after the first abhorrence of the crime had passed away. But this abhorrence of the crime was as great at one time as at another. This is testified to by one of defendant's witnesses (1815, 1816), and must necessarily have been so. Assuming, however, that defendant's contention that the abhorrence of the crime and not fear of the delays of the law was the cause of the mob spirit was right,

this feeling of abhorrence was simply slumbering, and it needed only to bring the crime prominently before the public again in order to arouse the lawless spirit and create a mob.

The proceedings in the federal courts furnished the occasion for again calling to the public's attention the horrors of the crime and the dangers of the law's delay, and the newspapers did this. After Johnson's conviction he was immediately removed from Chattanooga and kept away from there for over a month. During that period the papers referred to the crime but little, and naturally public excitement over it would not be so apparent. Moreover, the public believed that Johnson would be executed on March 13 until the reprieve to March 20 was granted on March 11 (1816, 1863, 1868, 1886, 1920, 1931).

After the petition for habeas corpus was denied by the Circuit Court, the community believed that Johnson would then be executed on the 20th (1681).

Sheriff Shipp testifies that inflammatory reports of the habeas corpus proceedings and efforts to appeal the case to the Supreme Court were sent out by the newspapers on March 11, and that because of that he had fear of mob violence to Johnson (2154).

From that time the papers kept the crime of which Johnson was convicted and the efforts made by Johnson's attorneys to obtain an appeal constantly before the public (1818). In addition to the articles already referred to we find the following:

March 16 the Chattanooga *Times* published a statement that a negro attorney had gone to Washington

to obtain an appeal from the order denying the petition for habeas corpus. This article said:

> People here are decidedly anxious as to whether Johnson is to suffer death for his crime next Monday or escape for an indefinite period by reason of intervention of the court at Washington. More unrest on the subject exists than was anticipated when Johnson was brought back to the county.
>
> * * * * *
>
> During the recent days of suspense as to his execution the desire for information has been feverish, and telephones at localities where information has been thought to be obtainable have been kept busy by inquirers. (1832, 1833, 1890, 1891.)

In the *News*, published the evening of March 19, there was an editorial which reviewed the local proceedings and said:

> THE JOHNSON CASE AGAIN.
>
> *The public seems to have an erroneous idea of the situation in the Ed Johnson case.* Briefly, the appeal which stops the execution of the negro to-morrow is from Judge Clark's court, at Knoxville, and not from the state court of this county. The attorneys for the condemned prisoner applied to the federal court for a writ of habeas corpus. After hearing the case several hours at Knoxville, Judge Clark denied the application. Before entering upon the consideration of the application for writ of habeas corpus, Judge Clark ruled that the side which lost could appeal from his

decision. He decided the case against the negro, and now an appeal has been taken to the Supreme Court of the United States. The higher court can now either uphold or reverse Judge Clark's decision. If Judge Clark is upheld, then the negro will be brought before Judge McReynolds again for a new sentence. If Judge Clark is overruled and the writ of habeas corpus allowed, then the case will be heard upon its merits; and if it be found that the negro has been deprived of his constitutional rights the case will probably be remanded for another hearing.

The general impression among lawyers is that the Supreme Court will uphold Judge Clark. If it does, it will be thirty or sixty days before Johnson can be legally executed, as we understand the case.

All of this delay is aggravating to the community. The people of Chattanooga believe that Johnson is guilty and that he ought to suffer the penalty of the law as speedily as possible. If by legal technicality the case is prolonged and the culprit finally escapes, there will be no use to plead with a mob here if another such crime is committed. Such delays are largely responsible for mob violence all over the country (313).

On the same afternoon a paper was published by negroes referring to the order of the Supreme Court. The character of the article was such that it would inflame the community and cause trouble. It had a headline to the effect that Ed Johnson would not die to-morrow and told about the stay of execution. "It

was published in a flamboyant, braggadocio sort of way" (61–64).

The fact that white attorneys had failed to appeal Johnson's case to the state Supreme Court and that negro attorneys were almost entirely responsible for the habeas corpus proceeding in the Circuit Court and the appeal from its order could only have the effect of exciting the public, and it is testified that it had a dangerous effect upon the lawless element (1818, 1819, 1922).

It is absurd for the defendants and their witnesses to assert that the community was in a state of peaceful repose on March 19 and the preceding days. It is idle for them to say that they did not apprehend mob violence to Johnson. Johnson had been kept away from Chattanooga, with the exception of the three days of his trial, from the time of his arrest until two days before the time set for his execution. What was it that made the officers, who, throughout this period, had been so apprehensive, feel sure that Johnson would not be mobbed? So long as the date fixed for execution was only a few days off, they might justify themselves upon that ground, but when an appeal had been taken and *execution stayed indefinitely*, what was there that had suddenly changed the feeling in this community which only a month before had manifested itself so strongly in favor of lynching Johnson that his attorneys would not prosecute an appeal for him because they thought he would die at the hands of a mob if not immediately executed?

Assurances that mob violence was not expected and that there was no occasion for providing more than the usual guard of one man for the jail in Chattanooga in which Johnson was confined are contrary to all reason, and can not be believed. They are inconsistent with statements made by Sheriff Shipp and his deputies that they were looking for a mob on the next day. Officers and others were heard to say that they expected a mob would attempt to lynch Johnson on the 20th (116, 122). What is there in this case that furnishes the least justification or foundation for a belief that a mob would be considerate enough to wait until the 20th? If the officers expected a mob at all, and they say that they did, they never can make reasonable men believe that they expected it on the 20th, but not on the 19th. But assuming they expected it on the 20th, no orders had been given and nothing had been done up to 8.30 o'clock on the night of the 19th to protect Johnson from the mob which was expected the next day.

The week before Johnson was lynched Shipp was heard to say that if the execution was stayed Johnson would be mobbed (208, 209). Testimony to this effect was given by the colored servant in Shipp's house. Although this is disputed by Shipp and relatives of his who, the servant says, were there at the time, her statement has every appearance of being truthful.

May 28, Shipp, in an interview with a newspaper reporter, said:

> I am frank to say that I did not attempt to hurt any of them [meaning members of the mob], and would not have made such an attempt if I could. * * * The Supreme Court of the United States was responsible for this lynching. * * * Many nights before the lynching there had been a sufficient guard around the jail. *I looked for no trouble that night, and on the contrary did not look for it until the next day.* * * * In my opinion the act of the Supreme Court of the United States in not allowing the case to remain in our courts was the most unfortunate thing in the history of Tennessee. * * * The people of Hamilton County were willing to allow the law to take its course, until it became known that the case would not have been disposed of for four or five years by the United States; the people would not submit to this and I do not wonder at it. These proceedings in the United States Supreme Court recently appear to me to be only a matter of politics (162, 171, 172).

Testimony that Shipp made these statements is corroborated by the statement of another reporter who interviewed Shipp on the following day regarding them (317–319), and is not denied by Shipp.

Little need be said about the testimony of Whittaker who prosecuted Johnson, and McReynolds who sat as judge at his trial. Their desire to protect Shipp is manifest. They are also evidently endeavoring by their testimony to justify their own actions on the

night of the lynching, and especially their neglect to make any attempt to identify any of the lynchers, even if they did not see fit to attempt to stop the lynching. They testify that about the time the mob entered the jail they were a few blocks from the jail and apprehended that there was a mob for Johnson. For more than half an hour before the mob came out of the jail with Johnson they were in the county court-house, about 125 feet from the jail (1666). They did not go to the jail and endeavor to quiet the mob or to identify the members of the mob (1667, 1670, 1755, 1757); they made no effort to ring the alarm bell on the court-house (1667); there was a telephone in the court-house and they were in communication with the police station but did not make any effort to get the police to go to the jail (1678, 1778); they made no effort to stop the mob when it came out of the jail (1669) nor did they make any effort to go after the mob or to identify them when they came out of the jail (1670, 1678, 1680).

To say that the sheriff and his deputies did not anticipate that a mob would attempt to lynch Johnson on the night of the 19th is to charge them not only with gross neglect of duty, but with an ignorance of conditions in a matter which vitally concerned them all as officers, and is directly contrary to their own testimony. The evidence of the danger was so manifest that anyone in that community with eyes or ears certainly must have known and appreciated it. The casual observer could not mistake it, and it is

ridiculous to say that officers of the law, who had been through the experiences these defendants had passed through the two months prior to the lynching, and who necessarily were in touch with all that was done and said and printed in that community regarding the Johnson case, did not know that a lynching probably would be attempted on the 19th. Under the facts shown to have existed in this case, when the sheriff and his deputies say that they expected a mob on the 20th, they practically concede the allegation of the information that they were informed and had every reason to believe that an attempt would be made on the 19th by a mob to lynch Johnson.

In view of this, Shipp's failure to make the slightest preparation to resist the mob, the absence of all of the deputies, except Gibson, from the jail throughout the mob's proceedings, occupying the period of three hours in the early evening, the action of Shipp in placing himself without resistance in the hands of the mob, and his failure to make any reasonable effort to save Johnson or identify the members of the mob, clearly show a purpose and disposition upon his part to render it easy for the mob to lynch Johnson and to help in the lynching.

It was only an accident—the striking of the lock on the corridor door by a member of the mob so that the key taken from Gibson would not work—that prevented the lynching of Johnson entirely without Shipp's appearance, although he was within a few blocks of the jail. After Shipp was informed that a

mob was at the jail and he could not do otherwise than go there, while attempting to make it appear that he was performing his duty to protect Johnson, he in fact at no time hindered the mob or caused it to be interfered with or helped in the slightest degree to protect Johnson, thereby manifesting not only utter disregard of this court's mandate but also a desire to assist in the defiance of this court's orders.

Between 8.30 and 9 o'clock on the night of the 19th Judge McReynolds, before whom Johnson was tried, and Mr. Whittaker, who prosecuted Johnson, communicated with Sheriff Shipp at his house, saying that there were persons around the jail who looked suspicious and suggesting that the sheriff had better go down to the jail (45, 164, 165, 170, 1654, 1750, 1844, 2159).

At that time a report was generally circulated in the city that a mob was at the jail to lynch Johnson (51, 80).

Shipp lived only a few blocks from the jail (108, 2161).

He reached the jail about 8.45 (80, 81, 362).

He was alone (81, 105, 2160, 2193).

A number of people were in the jail and outside of it when he arrived (80, 171, 2160, 2178).

He anticipated a mob was inside (2191).

Without stopping to speak to any of these people he rushed inside of the jail to the foot of the stairs leading to the floor Johnson was on (81, 171, 2160).

There he was taken hold of by five or six men and carried upstairs (83, 106, 171, 362, 2160).

The men who took hold of him had no firearms (84).

At first he was put in the bathroom and then was released and stood around near the corridor door, where the mob was at work, with three or four unarmed men around him (89).

He made no effort to get away or use force in opposing the mob (89, 362, 363).

He did not attempt to use his pistol or call for help (2189).

After the corridor door had been broken in, either Shipp or defendant Gibson told the mob which cell Johnson was in (90).

When the mob left the jail with Johnson, Shipp did not follow or make any effort to rescue Johnson or get others to help rescue him (92, 1670, 1671, 1780).

He was not locked up when the mob left the jail but was left entirely free (92, 1658, 1756, 2119).

When the crowd following the lynchers was about two blocks from the jail Shipp came out of the building alone and unguarded (179).

To a request made by a man at that time to go and identify members of the mob, Shipp replied that it would be dangerous and foolish. This request was made before the shooting occurred (180).

A special deputy met Shipp at the jail just after Johnson had been taken out and before he was shot. Shipp told him that the mob had Johnson. Shipp

was quiet and did not seem dejected. He made no effort to go after the lynchers (497).

Shipp made no efforts to reach the police or militia or others by telephone or otherwise, although he had a telephone at his house and they all had telephones (81, 378, 2160).

When he reached the jail he could have gone about three blocks to the police station and got the police (2190).

No alarm bell was rung at the court-house that night (81, 189, 1945), although it was rung the night of the attempted lynching, January 25, and it drew out a big crowd (1945).

No attempt was made by Shipp or others to summon a posse (82, 84, 92, 93, 187, 189, 227, 363, 364, 2179, 2188).

He sent no one after deputies (2179, 2190).

He made no effort to send anyone for help (2188).

It is testified that some time after the mob had left the jail for the bridge, Shipp sent Galloway and Clark down to the bridge, but he made no effort to go himself (2117).

There were in the crowd around the jail and at the scene of the lynching a substantial number of law-abiding men of good character (95, 101, 119, 120 193).

The readiness to respond to a call by the sheriff is manifested by the testimony of Ware, a justice of the peace, who states that he went to the jail with the intention of assisting the sheriff if he needed assistance (410).

That assistance in suppressing the mob might have been easily obtained if effort had been made is shown by the testimony of the chairman of the board of safety, who testifies that at the time of the first lynching in going 4 or 5 blocks to the jail he gathered about 16 men to help put down the mob (379).

The militia was drilling on the night of the 19th between 8 and 10.30 in the armory, a well-known place, 3 blocks from the jail. It was not called upon to assist in suppressing the mob, although it had been called out twice before by the governor and would have responded to a call by the sheriff (151–153, 158).

The governor had given assurances that any help asked for would be given (1800).

Numerous witnesses testify that no firearms were displayed by the mob except that one of their number was in the office of the jail with a Winchester rifle, and one pistol was exhibited to a reporter when the door was being broken open (20, 21, 411, 1669, 1776).

No deputies put in an appearance while the mob was at the jail or during the lynching except Frank Jones, who approached the jail with a prisoner, but upon seeing the mob immediately left with the prisoner, and excepting Mat Galloway who was seen in the crowd (86) (see below, pp. 40, 41).

From the time he reached there, about 6 o'clock, until the mob came, Gibson was the only officer in the jail (1968, 1973, 1999).

Heavy iron chains were sometimes used as additional guards upon circular doors in the jail, such as that leading to Johnson's corridor (452, 453, 1995, 1996, 2014, 2015). These were locked by the prisoners on the inside (2014). During the trial of Johnson these chains were used on the circular doors (2013). But none were on the circular door leading to Johnson's cell on the 19th (90). It also appears that Johnson's cell door was not locked (20, 91, 92).

Winchester rifles which were kept to defend the jail against mob violence were, at the time the mob attacked the jail on the 19th, in a show case in the office (unbarred part). These were taken out of the show case by the mob and unloaded (82, 83).

Although Shipp was in the midst or near the members of the mob for about an hour when they were in the jail, he made no efforts to obtain information so that he could identify any of them, and he testifies that he does not know any member of the mob (2184).

Only one conclusion can be drawn from these facts, all of which are clearly established by the evidence—Shipp not only made the work of the mob easy, but aided and abetted it.

JEREMIAH GIBSON.

Gibson, like Shipp, must have known that a mob would attempt to enter the jail and lynch Johnson on the 19th. About 6.15 in the evening of the 19th Brown, the day jailer, left the jail, transferring the keys of the jail to defendant Gibson, the night jailer.

Although he was at the jail for more than two hours before the mob arrived and was in charge of it, Gibson made absolutely no effort to summon assistance for resisting the mob or to prepare in any way to meet its attack. He also knew that unless he summoned assistance he alone would have to defend the jail against the mob and that he at best could offer only slight resistance. His neglect in this respect in itself is sufficient to sustain the charge that he aided and abetted the mob. There is, however, other convincing evidence upon this point. Soon after arriving at the jail Gibson told Mrs. Baker, a white woman and prisoner confined on the same floor with Johnson, that a mob was coming and directed her to go to her room (125, 126). When the mob was at the jail Gibson came to Mrs. Baker's door and told her that no one would hurt her (127). Gibson verifies this last statement (2064); although Gibson denied having made the first statement attributed to him by Mrs. Baker, she appears to have been a truthful witness.

Gibson himself testifies that when he heard the mob he went into the hospital cell, which was located on the top floor of the jail, and as soon as the mob got upstairs they came to him and without resistance he handed over to them his pistol and the keys, among which was a key to the door of Johnson's cell (2003, 2021); that he did not try to use the pistol at all or to resist the demands of the mob by force (2020); that from the top floor, where he was when the mob came, he could have gone to the kitchen and from there out of a door into the yard and back of the

jail (2017, 2018); that he made no effort to go out this way, although it took the mob about ten minutes after he knew they were there to break through the door between the outer office and the jail proper (2018–2020); that there are windows on the top floor out of which he might have called for help (2097); that he just gave up and made no effort at all to resist the mob or summon help (2021, 2022); that he made no efforts to go after the mob and rescue Johnson after they had left the jail, although he was left perfectly free when they went away (1671, 2030); that although the men were pretty bold in their work when he was near them he failed to recognize any excepting Nick Nolan (2028).

Comment upon these facts is unnecessary, and in view of them the complicity of Gibson with the mob can not be questioned.

MAT GALLOWAY.

Galloway was a deputy sheriff from the time that the crime was committed until after the lynching, and must be charged with knowledge of the impending lynching for the same reasons that Sheriff Shipp must be charged with such knowledge. Although aware of the fact that there probably would be an attack upon the jail and an effort to lynch Johnson, if we believe Galloway's testimony, he not only made no efforts to protect the jail or hinder or obstruct the mob, but remained away from the jail and the mob until after Johnson had been taken to the bridge and only appeared upon the scene after Johnson was dead.

There is, however, testimony to the effect that Galloway was present at the jail before Johnson was taken from it, and proceeded to the bridge, where the lynching occurred, directly behind the mob.

Fred Smith, a colored witness, whose testimony has the appearance of being truthful and fair, testified that he was standing outside the jail when the mob was at work in the jail, and that at about 9.30 o'clock he saw Galloway coming from the direction of Seventh street along Walnut street on the side upon which the jail is located, and pass into the crowd, but did not see him after that. He says that he has known Galloway for three or four years (225, 226). Galloway made no efforts to summon a posse or get assistance to resist the mob (227). A rigid cross-examination of Smith failed to disclose any discrepancies in his testimony.

Henry A. Lee, a colored witness, and his wife testified that when the mob was on its way from the jail they saw Galloway among the crowd following the mob which had Johnson, and that he had either a gun or a stick in his hand (1180, 1181, 1213).

Because of the testimony as to the reputation of Lee and his wife, their statements perhaps should not be given much weight, if it were not for the fact that the testimony of some other reliable witnesses tends to corroborate their statements.

Ware, a justice of the peace, whose testimony is absolutely reliable, testified that directly after the lynching he saw Galloway on the bridge where the lynching occurred, and that he had a Winchester rifle

in his hand (419, 420, 423). A reliable witness also testified that he saw a man of Galloway's stature carrying a Winchester rifle in and around the jail when the mob was at work there (186, 191, 1509).

Galloway was a large man and had the reputation of being rough and violent (1509, 1511, 1537).

CASES AGAINST MEMBERS OF THE MOB.

It was extremely difficult to obtain direct and positive evidence of participation by individuals other than officers in the conspiracy and lynching. This is undoubtedly due to the feeling in the community, and to the reluctance of nearly all who were present as spectators to subject others to punishment. All of the defendants charged with being members of the mob, with the single exception of Williams, have set up alibis and introduced considerable testimony in support of them. There is, however, some convincing proof that the defendants took an active part in the conspiracy and lynching. The lynchers are described generally as "mechanics or men of that class" (366), and all of the defendants except Shipp and Gibson come within this description.

NICK NOLAN.

Nolan was a saloon keeper at the time of the lynching (968).

Ware, a justice of the peace, whose testimony as stated above, stands unimpeached and is fair and reliable in every respect, testified that he saw Nolan put the noose around Johnson's neck at the bridge (415, 417). He also testified that he saw Nolan hit

Prichard, a newspaper reporter, who was standing close to the mob around Johnson (426). The effort to refute this by testimony of Prichard (1281–1283) is palpably without avail. Prichard says that he could not see and does not know who hit him (1283). Effort was also made to refute the statement of Ware by the statement of Chivington, a newspaper reporter, who testified that he saw the man who hit Prichard and that it was not Nolan, and that he did not see Nolan there that night. Chivington, however, testified that Nolan might have been one of the masked men; that it was light where Prichard was struck, and that Ware was right up among the lynchers at the bridge (911, 913, 916, 917).

Nolan also introduced testimony of Pemberton, a deputy circuit court clerk of Hamilton County, who said that he saw one man hit another and the man who struck the blow was not Nolan, whom he said he had spoken to only once in his life. He said, however, that he was 20 feet away from the place where the man was struck, and that the man who struck the blow had his back toward him. Although Prichard was a good friend of his and he had known him for years Pemberton says he did not recognize him as the man who was struck (919, 920, 931, 932). He also says that he did not recognize a number of other close friends who were there (932, 933). It also appears that he is nearsighted and he says he did not see any crowd around the jail about 10 o'clock, when he passed into it. (921, 922, 933). These facts and the very apparent

bias of the witness deprive his testimony of any substantial weight and certainly it does not outweigh the very positive testimony of Ware.

Gibson, the night jailer, testified that one of the men in the mob, who had a mask over his face, was Nick Nolan; that he had known Nolan for a year or two and that Nolan had talked to him and waited upon him at Nolan's bar (2023, 2024, 2059, 2060).

Gibson also testified that he heard members of the mob use the name "Nick" (2052, 2058).

It is apparent that Gibson was an unwilling witness in giving this testimony, and for this reason says that he is not entirely positive as to his recognition of defendant Nolan, but we think that no other conclusion can fairly be drawn from his statements than that he saw Nolan in the mob.

Joe Franklin, a colored witness, says that he saw Nolan in the mob that took Johnson out of the jail (521, 522). Effort was made by the defendant to show through Pemberton that Franklin was not on the court-house steps, where he said he was when the mob came out of the jail, but Pemberton's testimony upon this point is of little or no value, for in addition to the fact that he was near-sighted and failed to recognize many of his friends that night, he says that he was running and kept his eyes on the steps in going down them in order to keep from falling; that the light was in his eyes, and that he was intent upon catching up with the crowd (925–928).

The evidence above referred to is convincing that Nolan was among the lynching party, and the testi-

mony introduced in his behalf falls far short from overcoming the very positive evidence against him. Nolan claims to have been in his saloon from 7 to 9.30 on the evening of the 19th. His only supporting testimony as to this is that of his bartender, who, upon cross-examination, stated that he had no recollection of Nolan's being at the saloon on the 19th, and of his porter who worked in the saloon. From 9.30 to 10 o'clock Nolan claims to have been in his brother's saloon. The only corroborating evidence as to this is that of his brother and a man who was in his brother's saloon drinking with him. Neither of these men nor the porter knew that Nolan was accused until two months after the lynching, and the cross-examination shows that they might well be mistaken as to the night.

LUTHER WILLIAMS.

Williams was a saloon keeper (1183).

Ware, justice of the peace, whose testimony has been heretofore referred to, says that he saw Williams shoot Johnson and that he was about 22 feet away from Williams at the time; that he saw Williams shoot five times. He also says that he had known Williams for several years and that they belong to the same lodge (417, 711).

Prichard's testimony, which apparently conflicts with this very positive testimony of Ware, is of little value because of Prichard's dazed condition at the time of the shooting, Prichard a few minutes before having been knocked down by a severe blow. It is

possible that Prichard's testimony refers to some other man who may have fired (1285–1290).

Lyon, a colored witness, also testified that he saw Williams in the crowd where Johnson was shot or hanged and that he had known Williams for some years (334).

Williams claims to have been in his own saloon until about 9.30, when he closed it and went to the jail; he says that he went upstairs in the jail and stayed there for a few minutes and came out just before Johnson was brought out and that he went to the bridge and saw Johnson lynched, but denies that he participated in the acts of the mob (1184–1188). His only supporting testimony related to his general reputation, most of which was upon cross-examination shown to be valueless. The testimony showed that Williams had been arrested several times for fighting and gaming and that previous to the lynching he had killed a negro (1162, 1202, 1203).

These character witnesses, although saying Williams's reputation was good, also testified as follows:

T. G. Newman (1263–1270): Witness never associated with Williams. Has seen him only with saloon keepers and bartenders. Never heard Williams's character discussed. Never heard anything about him one way or the other. Williams has been arrested for gaming.

B. A. Close (1174–1183): Williams is a customer of his. Is not one of his associates. Does not know what Williams does outside of business hours or who his associates are.

Edward G. Spencer (1168–1174): Witness is a saloon keeper. Williams's associates are mostly saloon keepers.

C. W. Cox (1163–1168): Witness is in wholesale whisky business and Williams is a customer of his. Drinking men and liquor sellers are Williams's associates largely. Never heard any of Williams's associates speak about him.

Samuel A. Conner (1156–1163): Witness was formerly a saloon keeper and bartender. He does not know what people generally think about Nolan.

J. O. Martin (1152–1156): Witness is in wholesale whisky business and Williams is a customer of his and pays him well. He does not know who Williams's associates were. Never heard him talked about one way or the other and does not know what others think about him.

Solomon Geismar (1147–1152): Witness does not associate with Williams and never heard anyone talk about him one way or the other.

BART JUSTICE.

Justice is a molder (720).

It will be remembered that Justice was active in the first attempt to lynch Johnson on January 25 and was on the committee which went through the jail.

William Tarpley (colored), a prisoner, testified that he heard Justice call from the top of the stairs to the men below to come up (345).

Joe Franklin (colored) testified that he saw the mob bring Johnson out of the jail and heard Justice

holler "By God! we have got him, boys; clear the way out." That he was familiar with Justice's voice and knew it was his (517).

Testimony was introduced by Justice tending to show that Franklin was not at the place he stated he was when Johnson was being taken from the jail (919) but Franklin's testimony is corroborated by that of J. A. Walters, whose veracity is unquestioned (2246–2247).

Ware, whose testimony has been previously referred to, says that he did not see Justice come out of the jail with Johnson nor did he see him at the lynching (707). While we think Ware intended to be fair and truthful in all that he testified to, his statement in respect to Justice is only of a negative character and it might well be that Justice was there although Ware did not recognize him, as there were a number of men in the mob who wore masks over their faces.

While the description of Justice, as given by himself (763, 764), does not correspond exactly with that given by others of the leader of the mob and the man who used the sledge in breaking down the door to Johnson's compartment, and there appears to be some confusion as to whether the leader was the same man as the one who used the sledge most of the time, there are points in the description of that party given by others which suggest the idea that it was Justice (88, 118, 119, 366, 372, 375).

Justice claims to have been at the house of a friend, James F. James, from 7 to 10.20 o'clock on

the night of the 19th and supports his alibi with the testimony of his wife and daughter, of James, and of Frye, a man living next to James.

The testimony of Frye is valueless. The strongest interpretation that can be put upon it is that he knew Justice was at James's house at 7 o'clock and that he heard him say good-night some time after 9 o'clock, but how long after he can not say (731–733).

HENRY PADGETT AND WILLIAM MAY.

Padgett and May are carpenters (874, 875).

Stonecipher testifies that at about 4.30 on the afternoon of the 19th he met Padgett and May.

> A. Mr. Padgett asked me if I had heard what the Supreme Court had done in the Johnson case. I told him I had understood that they had stayed the execution. He said, yes, that is what he had understood, and it was a damn outrage.
>
> * * * * *
>
> A. Then they said they had no business interfering with our business at all.
>
> * * * * *
>
> A. That is about all that Padgett said. Then May said, we will see to that ourselves.
>
> Q. Go ahead; was that in Padgett's presence?
>
> A. Yes, sir; they were both together (263, 264).

Stonecipher testifies that the morning after the lynching he met Padgett inside of Ransom's saloon:

> A. I went in and Padgett had the morning Times and the first word he said, he said: "This damn paper has printed a lie about this

lynching." I said: "How do you know it's a lie, Henry?"

Q. What did he answer?

A. Well, he told me he was there.

* * * * *

Q. Was anything further said between you at that time?

A. Henry says, "We did the nigger up all right, didn't we?" Alf says, "You bet we did." That was all that was said (267, 268).

Stonecipher also testified that the same morning he saw May in front of the Stag Hotel:

Q. Did you have a conference with him?

A. Yes, sir; he had the left side of his nose skinned up pretty bad, and I says: "Hello, Bill, what is the matter with your nose?" He says: "I skinned it last night breaking that damn jail door down and getting that nigger out" (268).

An attempt was made to prove that Stonecipher's reputation for truth and veracity was bad. Many of the persons who undertook to testify against Stonecipher in this regard were clearly disqualified because of their lack of familiarity with his reputation. The animus and foundation for this attack upon Stonecipher's reputation are well stated by Mr. Rider, a witness introduced by defendants. He testified on cross-examination:

Q. When did it get to be bad; since this suit came up and since he has been a witness?

A. All I have heard about it has been since the suit came up.

Q. Since the suit came up, and since he testified in the case against a lot of defendants, he has been getting a bad reputation?

A. No.

Q. You did not know anything about it, or never heard of his bad reputation before this suit came up, did you?

A. No, sir.

Q. How many years have you known him?

A. Ten or twelve years. He has worked for me.

Q. He had a perfectly good reputation until the time the suit came up?

A. I never heard anything against it until that time (1124, 1125).

Q. There is a good deal of feeling against Stonecipher, is there not, on account of his testimony?

A. I think there is (1128).

No motive for Stonecipher's testifying falsely is shown. His story is entirely reasonable. He had known and worked with Padgett and May for several years and knew them well (265, 271, 875).

Padgett and May were friends (880, 892, 1043). Padgett and May both testified that May went to Padgett's house in the morning of the 19th and they went together to a saloon, where they stayed all the afternoon, drinking considerably, and left the saloon together about 5 o'clock in the evening (871, 872, 876, 878, 880, 1039, 1044).

Padgett, while he denied having any conversation with Stonecipher on the 20th relative to the lynching (1038), says that he saw Stonecipher and Dobbs at the

Stag saloon on the morning of the 20th (1051), and Dobbs, whose veracity is unquestioned, testified that Padgett spoke to Stonecipher on the 20th about the lynching (492–495).

Although May denies the conversation testified to by Stonecipher as having taken place the morning after the lynching, and claims that his nose was skinned by falling on his steps when he went home drunk about 6 o'clock on the 19th (872), it is peculiar that this wound, which was described by May and his wife as being only a small scratch (889, 904), should have made such a distinct impression upon both May and his wife (903, 904). May denies seeing Padgett at all on the 20th (884, 892), but Dobbs swears that he saw them together (492–495). May admits that he passed Stonecipher in front of the Stag saloon where Stonecipher testifies the conversation took place on the morning of the 20th, but denies having the alleged conversation (891, 893–896).

Greater weight must be given Stonecipher's testimony, strongly corroborated as it is by Dobbs's testimony, than is given the denials of the defendants. Dobbs's statements stand absolutely unquestioned by defendants, and being in sharp conflict with the testimony of the defendants in several respects, clearly shows that they have not told the truth.

Both Padgett and May set up alibis. Padgett claims to have been in the pool room of the Stag saloon from about 6 until 10 on the night of the 19th. His testimony to that effect is supported by the statements of four men who claim to have been in

that pool room during those hours. There are some very noticeable discrepancies in the testimony of these men, and the circumstances that they relate are so peculiar as to cast grave doubt upon their stories.

Chambers says that he was in the Stag pool room all the time from 6 to 10 on the evening of the 19th; that Padgett left the pool room with him, McJunkin and Gray, about 10 o'clock and that they left Padgett on the street in front of the saloon (979–981); that Padgett did nothing but sit around in the pool room while he was there (979, 988, 990); that he goes to that pool room about every Saturday night (984, 985), but this was the first time he had seen McJunkin in there in a good while and that McJunkin is not in the crowd that usually goes around there (991); also that he has never seen McJunkin there since (992).

McJunkin testifies that he saw Padgett in that pool room from 8.30 until they left about 10.45 o'clock (996); that was the first time that he had played pool with Chambers and that he plays there once or twice a week (997). He says that Padgett was around the table putting up balls for the players, etc. (996, 1001).

Gray testifies that he went into the Stag pool room at 8 o'clock and came away about 10; that Padgett was there while he was and that Padgett was sitting around all the time he was there (1011); that he and McJunkin go to that pool room Saturday nights (1007) and that this was the second time he had seen Chambers there (1007).

Duckworth swears that although he was at the Stag pool room that night and saw Padgett there he

himself was never there before; he does not go there often and does not remember being there since (1026). He also says that Padgett was asleep in a chair while he was there and did not take any interest in the game or set up the balls (1018, 1023).

Padgett himself swears that he was in the pool room part of the time and the bar adjoining the pool room part of the time; that he sat around some and set up the balls (1040); that Saturday night is usually the night that men get together at the Stag (1046).

It is a most peculiar coincidence that all of these men, one of whom had never been in that pool room before and has not been there since, and the others, who, in so far as they were accustomed to go there, went on Saturday nights, should have congregated at this place on Monday night, the night of the lynching. It does not sound reasonable, and the discrepancies in their testimony are sufficient to cast the gravest doubts upon the truthfulness of their stories, especially as they all say there was nothing in particular which fastened the incident and date upon their minds.

May claims to have gone home and gone to bed after he left Padgett, about 5.30 in the evening (872–887). His only supporting testimony is that of his wife. His house was only five blocks from the jail and four blocks from the bridge (897).

We submit that the alibis have not been established by any evidence worthy of belief, and that Stonecipher's testimony, corroborated by that of a

wholly disinterested party, Dobbs, is sufficient to show participation of Padgett and May in the conspiracy and lynching.

FRANK WARD.

Ward is a bricklayer (1095).

Stonecipher testifies that on the afternoon of the 19th, about 5 o'clock, he saw Ward in front of Mullery's saloon.

> A. I stopped on the curb, waiting for a car to go home and Ward called to me; he says: "Ain't you from Georgia?" I says: "I used to live there."
>
> Q. What is that?
>
> A. I stopped on the curb and Ward came out of the saloon; he hollored to me and called me by name and says: "Ain't you from Georgia?" I says: "Yes; I used to live in Georgia, mighty near raised there." He says: "We want you to help us lynch that damn nigger to-night."
>
> Q. What was that?
>
> A. He says: "We want you to help us lynch that damn nigger to-night."
>
> Q. What did you say?
>
> A. I says: "I don't believe it would pay. I believe Sheriff Shipp would shoot the red hot stuff out of you."
>
> Q. What did he say?
>
> A. He says "No; it is all agreed. There won't be a sheriff nor a deputy there." I said "Ward, I believe you are lying." That is just what I told him (265).

Stonecipher also testifies that he saw Ward in front of Price's saloon on the evening of the 20th. Ward said:

> "You are the first damn man from Georgia ever I saw that did not have nerve enough to kill a nigger" (268).

Stonecipher testifies that he had known Ward for several years and that they had boarded at the same place for several months (266). Ward denies knowing him at all (1091), but it appears that in the winter of 1903 they had adjoining rooms, heated by one stove in Stonecipher's room, in a boarding house, and ate at the same table (2215, 2222, 2225, 2227).

Ward claims to have been in and around Barnes's saloon throughout the lynching. He supports his alibi with the testimony of Barnes, Prince, Ward's wife, and Spradley, a man who worked in a restaurant two doors from Barnes's. The substance of the testimony is that Ward was too drunk to have participated in the lynching. Ward lived over Barnes's saloon (1062, 1077). Barnes says that all he knows is that Ward was in his saloon about 7 o'clock on the 19th and once or twice after that (but that he can not say at what time) and that he saw Ward when he closed about 10 o'clock (1074). The barkeeper, Prince, testifies that the last he saw of Ward was when he (Prince) left the barroom for the night at 8.20 (1078). It would take only five minutes to go from Barnes's saloon to the jail (1073, 1074.)

Ward gets drunk often and is violent and dangerous when drunk (1083–1085, 1068, 1074, 1075, 2044).

From the testimony it appears that Ward was drinking heavily all day on the 19th (1070, 1084, 1078, 1100). It also appears that Barnes's saloon, in and around which he was all day, was only three or four blocks from Mullery's, where Stonecipher says the conversation of the 19th occurred (1103). Ward testified that he did not know whom he might have talked to on the 19th. Although Ward denies the conversations with Stonecipher, his condition was such that his statements are unreliable, and Stonecipher appears to have told the truth.

INTENT.

The information alleges that the acts of the defendants were done with intent to show their contempt and utter disregard for the order of this court, and in order to prevent this court from hearing the appeal of Johnson. In the opinion of Mr. Justice Holmes, delivered upon the hearing of the preliminary questions of law, it was said:

> If the presence and acts should be proven, there would be little room for the disavowal of intent. * * * It may be found that what created the mob and led to the crime was the unwillingness of its members to submit to the delay required for the appeal. From that to the intent to prevent that delay and the hearing of the appeal is a short step.

Intent is best proved, and in many cases can only be proved, by acts. If the acts with which defendants are charged have been proven, it needs no argu-

ment to demonstrate that defendants intended to prevent this court hearing Johnson's appeal and to delay its mandate. It has already been shown that the reason for the mob's action was fear of the law's delay and the unwillingness of the sheriff, his deputies, and the members of the mob to submit to it. The intent to commit a contempt of this court was necessarily present in the acts of defendants.

This proceeding is unique in the history of courts.

Its importance can not be overestimated. Lynchings have occurred in defiance of state laws and state courts without attempt, or at most with only desultory attempt, to punish the lynchers. Perpetrators of such crimes have heretofore been censured only by public opinion; courts have remained silent. Powerful as such opinion always is, severe as it has been in its rebuke of such deeds, it has been inadequate to check these outbreaks of lawlessness. Only recently lynchings became so numerous that the whole country was aroused to earnest discussion of mob violence and a remedy for it. It is indeed useless to seek relief unless the judiciary can punish those who snatch and kill the men it has imprisoned. The arm of justice fetters men for years. It strikes death to the murderer. It can take property and life. Must it confess it is too weak to protect those whom it has confined? The arm can destroy. Can it not protect? If the life of one whom the law has taken

into its custody is at the mercy of a mob the administration of justice becomes a mockery.

When this court granted a stay of execution upon application of Johnson, it became its duty to protect him until his case should be disposed of. It matters not with what crime he was charged. It is immaterial what the evidence was at the trial. Sentenced to death, Johnson came into this court alleging that his constitutional rights had been invaded in the trial of his case, and upon this the Supreme Court said he had a right to be, and would be, heard. From that moment until his case should be decided, he was under the protection of this court. And when its mandate, issued for his protection, is defied, punishment of those guilty of such contempt must be certain and severe.

Never in its history has an order of this court been disobeyed with impunity. A few attempts to disregard its decrees have been made, but always without ultimate avail. In 1779 the Continental Congress, through its Standing Committee of Appeals in Cases of Capture, reversed the judgment of the Court of Admirality of the State of Pennsylvania and made an award in favor of Olmstead, a claimant, in a prize case. The State resisted enforcement of the decree and Congress yielded. Olmstead thus found the decision of the appellate tribunal in his favor useless to him. With the adoption of the Constitution the jurisdiction of appeals formerly exercised by the Continental Congress became vested in this court and in 1808 Olmstead sought redress here in the same

matter. (*United States* v. *Peters*, 5 Cranch, 115.) In one of his powerful opinions the great Chief Justice made it clear that the court's decrees in favor of Olmstead must be obeyed. Nevertheless the State for a time defied the order. This resistance, however, was unable to withstand the unswerving determination of this court and finally disappeared. Members and officers of the state militia who had interfered with execution of the decrees were tried and sentenced to fine and imprisonment. This court then declared and established a supremacy which has ever since been maintained and which will always be a priceless heritage to the American people.

In the controversy between the State of Georgia and the Cherokee Indians, which came before this court in *Worcester* v. *Georgia*, 6 Pet., 515, the State refused to release a prisoner in obedience to a direction of this court. Although the National Executive declined to aid in requiring obedience, after some months the State withdrew opposition and again the supremacy of this court was recognized.

In the history of the case of *Ableman* v. *Booth*, 21 Howard 506, we for a third time find evidence of a State arraying itself against this court. Officers and courts of the State of Wisconsin, contrary to the decision of this court, insisted that the fugitive-slave law was unconstitutional, and resisted its enforcement. But the outcome was the same. Finality of decisions of the Supreme Court of the United States was declared, and obedience to its order was compelled.

It is not surprising that in the early history of this country, when the jurisdictions of the Federal and the State Governments were not clearly defined or well understood, States should have resisted the orders of this court. But it is remarkable that individuals should now undertake to defy the mandate of this great tribunal.

Justice is at an end when orders of the highest and most powerful court in the land are set at naught. Obedience to its mandates is essential to our institutions. Contempts such as this strike down the supremacy of law and order and undermine the foundations of our Government. Recurrence of such acts must be prevented. The commission of the offense has been established, and punishment should be imposed in accordance with its gravity.

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